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IN THE

Supreme Court of the United States

FOOD EXPRESS, INC.,
Petitioner,

v.

LARIE E. BOSTAIN ET UX.,
Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF WASHINGTON

BRIEF OF GORDON TRUCKING, INC. AS *AMICUS CURIAE* IN SUPPORT OF THE PETITIONER

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I. INTEREST OF AMICUS CURIAE[1]

Gordon Trucking, Inc. ("GTI") is a third-generation, family-owned interstate truckload transportation company. GTI hauls full truckload freight throughout 48 states and Canada. The company operates eight terminals and thirteen satellite yards in nine states, from Washington to California to Wisconsin. GTI employs approximately 1,775 people, including some 1,094 interstate company truck drivers, and contracts with an additional 150 owner-operators. GTI's headquarters and busiest terminal are located in Pacific, Washington.

In the case below, analyzing the Washington Minimum Wage Act ("WMWA"), the Washington Supreme Court invalidated regulations of the Washington State Department of Labor & Industries interpreting that act and announced a new overtime eligibility test for interstate truck drivers—whether the driver is "based in" Washington. The decision below, if not reversed, would potentially affect the operations of all trucking companies that operate in Washington.

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[1] Pursuant to Rule 37.6, *amicus* affirms that no counsel for a party authored this brief in whole or in part and that no person other than *amicus* and its counsel made a monetary contribution toward the preparation or submission of this brief. The parties have consented to the filing of this brief; letters of consent have been filed with the Clerk's office. Counsel of record for all parties received notice at least 10 days prior to the due date of *amicus curiae's* intention to file this brief.

The decision's most significant effects, however, would be on companies that, like GTI, are headquartered or have significant operations in Washington and employ potentially "Washington-based" interstate drivers. GTI thus has a direct and substantial interest in the overtime eligibility standard for interstate truck drivers who may be considered "Washington-based."

Food Express, Inc.'s Petition for a Writ of Certiorari (the "Petition") and the Brief of the American Trucking Associations, Inc. and the Washington Trucking Associations as *Amici Curiae* in Support of the Petitioner (the "ATA/WTA Brief") raise and discuss in detail the numerous conflicts in authority implicated by the decision below. GTI desires to bring to the Court's attention certain relevant matters that are referenced but not discussed in the Petition and the ATA/WTA Brief, to wit, the specific ways in which the constitutional and other concerns that Petitioner identifies would manifest in the operations of interstate truckload carriers like GTI.

II. SUMMARY OF ARGUMENT

As explained in the Petition and the ATA/ WTA Brief, the Washington Supreme Court's decision that "Washington-based" interstate truck drivers are subject to the WMWA conflicts with the decisions of various courts, including this Court, with respect to four issues: (1) the extraterritorial application of state law; (2) the preemptive scope of the 1935 Motor Carrier Act ("MCA"); (3) the

application of the so-called *Pike* balancing test, a dormant commerce clause analysis that applies when a state statute burdens interstate commerce; and (4) the preemptive scope of the Federal Aviation Administration Authorization Act ("FAAAA"). MCA preemption and extraterritorial application of the WMWA are thoroughly and correctly analyzed in the Petition and the ATA/WTA Brief. This brief, thus, addresses only (1) the Washington Supreme Court's misapplication of the *Pike* balancing test, and (2) the FAAAA's preemption of the WMWA as interpreted by the Washington Supreme Court in the decision below.

A. Where a state statute incidentally burdens interstate commerce in furtherance of a legitimate local public interest, courts must balance the burdens imposed on interstate commerce against the putative local benefits. *Pike v. Bruce Church, Inc.*, 397 U.S. 137, 142 (1970). Assuming that the *Pike* balancing test applies in this case,[2] the court below misapplied the test by ignoring the significant burdens that its decision would impose on interstate trucking companies in violation of the dormant commerce clause, and by unreasonably

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[2] In the decision below, the Washington Supreme Court improperly applied the *Pike* balancing test in determining whether application of the WMWA outside of Washington State violates the Commerce Clause of the United States Constitution. Extraterritoriality and the *Pike* balancing test are two separate inquiries. *See* Petition at 9-13; ATA/WTA Brief at 14-15.

positing that local benefits would result from the decision.

A.1. The primary burden that the decision below would impose on interstate commerce is that all interstate motor carriers who provide service in Washington would have the constant burden of analyzing the overtime eligibility of their drivers who operate in Washington to determine whether those drivers were "based in" Washington and, thus, were entitled to overtime under state law. Employers would have to make this determination by applying a vague "choice of law" standard that would permit employees regularly to slip into and out of "Washington-based" status. Dean Prosser has called choice of law a "dismal swamp" in which lawyers and judges frequently become lost. The decision below would require trucking companies to navigate this swamp as often as every week, with respect to numerous drivers, reviewing and attempting to "balance" factors that frequently change for interstate drivers, in an industry with a 130% annual turnover rate. They would face the constant potential for litigation and criminal or civil liability (including personal liability for decisionmakers) should they appear to err in their analysis. This is a significant burden on interstate commerce.

A.2. The burden that the decision below would impose on interstate commerce would far outweigh the supposed local benefit of applying the WMWA to interstate drivers. The court below identified two local purposes of the WMWA: (a) "to

establish minimum standards of employment within the state of Washington," and (b) "to encourage employment opportunities within the state." Petition App. A, at 9a (decision below) (quoting RCW 49.46.0005). Neither of these purposes is plausibly advanced by the decision below.

Far from establishing minimum standards for employment within Washington, the decision below affirmatively permits some employees (those who are not "based in" Washington) to work overtime in Washington with no entitlement to overtime pay under Washington law, while simultaneously requiring overtime pay for other employees (those "based in" Washington) performing the same work almost entirely *outside* of the state.

Moreover, by making "Washington-based" employees more costly and less flexible to employ than employees who are "based" outside of Washington, the decision below would *discourage* employment within Washington. This would occur because of three unique features of the interstate trucking industry, all of which the court below ignored.

First, unlike employees who work in fixed locations, Washington employees cannot practicably be substituted in for interstate truck drivers because, by the time the drivers have worked 40 hours in a workweek (the trigger for overtime pay under the WMWA[3]), they are likely to

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[3] RCW 49.46.130(1).

be hundreds or thousands of miles from Washington.

Second, unlike employers with fixed production or service locations, in which a replacement worker can take over another worker's tools, machines or workstation, every interstate driver requires a tractor-trailer combination in order to do his or her job. Thus, where employers with fixed production or service locations might simply hire more workers in lieu of paying overtime wage rates, the large capital cost inherent in putting an additional interstate driver on the road prevents trucking companies from simply fielding more drivers.

Third, unlike Washington employers whose employees work in fixed locations, interstate trucking companies have obvious alternatives to hiring additional "Washington-based" employees. For example, long-haul truck drivers are inherently mobile. Thus, it would be relatively simple for a multi-state trucking company to rely primarily on drivers "based in" states other than Washington to serve the Washington market. Trucking companies could also rely on owner-operators (independent contractors who own their own equipment and are not subject to the WMWA) or other subcontractors to haul freight primarily into and out of Washington.

For these reasons, the decision below would not encourage employment in Washington. Rather, it would encourage motor carriers to rely on drivers who are presumptively not "Washington-based" employees, and who, therefore, would be less costly

and more flexible to employ as drivers. *Certiorari* should be granted because the decision below misapplies this Court's dormant commerce clause jurisprudence, first by reaching the *Pike* balancing test at all, and alternatively by misapplying the test.

B. *Certiorari* should also be granted to resolve a split in authority regarding the preemptive scope of the FAAAA. The FAAAA preempts state laws that would have a significant effect on the prices, routes or service of trucking companies like GTI. The economics of the interstate trucking industry would leave trucking companies no choice but to respond to the decision below by altering prices, by re-routing drivers, or by reducing service in Washington. As a result, the FAAAA, as interpreted by this Court, preempts the WMWA. The Washington Supreme Court's contrary holding highlights and exacerbates a conflict among federal circuit courts with respect to the continued vitality of this Court's interpretation of FAAAA preemption.

For all of these reasons, *certiorari* should be granted.

III. ARGUMENT

A. The Decision Below Conflicts with This Court's Dormant Commerce Clause Precedents Because It Would Result in Substantial Burdens on Interstate Commerce Without Countervailing Local Benefit.

In *Pike v. Bruce Church, Inc.*, 397 U.S. 137, 142 (1970), this Court held: "Where [a] statute regulates even-handedly to effectuate a legitimate local public interest, and its effects on interstate commerce are only incidental, it will be upheld unless the burden imposed on such commerce is clearly excessive in relation to the putative local benefits." As noted above and discussed in the Petition and the ATA/ WTA Brief, the court below improperly conflated two issues: (1) whether extraterritorial application of the WMWA is permissible, and (2) whether the WMWA fails the *Pike* balancing test. Assuming, however, that the *Pike* balancing test applies, the court below misapplied the test by dismissing the significant burdens that its decision would impose on interstate commerce and by unreasonably positing that local benefits would result from the decision.

1. The Decision Below Would Impose Substantial Burdens on Interstate Commerce.

The primary burden that the decision below would impose on interstate commerce is that all motor carriers who provide services in Washington would have the constant burden of analyzing the

overtime eligibility of their drivers who operate in the state of Washington. As the D.C. Circuit has observed with respect to overtime eligibility, "the practicalities of the situation . . . require a reasonably commonsense rule which can be applied with reasonable simplicity by area businessmen." *Williams v. W.M.A. Transit Co.*, 472 F.2d 1258, 1265 (D.C. Cir. 1972); *cf. Strain v. West Travel, Inc.*, 117 Wn. App. 251, 259, 70 P.3d 158 (2003) (finding wage statute preempted by federal admiralty laws in part because paying each maritime worker "according to the laws of the worker's home state [would be] a nightmarish accounting prospect"). The decision below, however, would require anything but a simple, commonsense inquiry. Rather, it would require ongoing application of a vague "choice of law" standard to overtime eligibility determinations. Petition App. A at 11a n.5, 22a (decision below). Choice of law has famously been described as

> a dismal swamp, filled with quaking quagmires, and inhabited by learned but eccentric professors who theorize about mysterious matters in a strange and incomprehensible jargon. The ordinary court, or lawyer, is quite lost when engulfed and entangled in it.

William Prosser, *Interstate Publication*, 51 MICH. L. REV. 959, 971 (1953). Considerably more lost than courts and lawyers would be *non*-lawyers in the typical trucking company's payroll department

faced with the task of continuously trying to puzzle out the overtime eligibility of interstate truck drivers under a mysterious choice of law standard.

Two real-world scenarios illustrate the problem. Driver A lives in Washington, drives on a Washington driver's license, was hired by GTI's recruiting department in Pacific, Washington, and received orientation at GTI's Medford, Oregon terminal. Driver A receives a dispatch from a driver manager at GTI's Turlock, California terminal. He picks up a tractor licensed in Oregon at GTI's Clackamas, Oregon terminal. He takes a load to California, another load to Utah, and a third load to Washington. He then parks his truck overnight at his home in Washington, and returns the equipment to the Clackamas terminal the next morning.

Driver B lives in Oregon and drives on an Oregon driver's license. She was also hired by the recruiting department in Pacific, Washington, and was oriented in Pacific. Driver B receives a dispatch from the Pacific terminal. She starts her trip from the Clackamas, Oregon terminal in a tractor licensed in Oregon. She picks up her first trailer in Pacific, Washington, and spends the next week running back and forth between Portland, Oregon and British Columbia, spending 90% of her time in Washington.

There is no way for interstate trucking companies to predictably determine the overtime eligibility of these interstate drivers in a given workweek using the vague "choice of law" standard

adopted in the decision below. The Washington Supreme Court itself did not analyze the issue in the decision below. Rather, the court summarily concluded that choice of law principles pointed to Washington as the "base" of the plaintiff below, Larie Bostain. Petition App. A at 2a-3a, 11a. But the facts that the court articulated about Mr. Bostain—and other facts that might or might not bear on the choice of law question—could be present or absent in any number of combinations.

Mr. Bostain, for example, apparently always began and ended his driving runs at, his employer Food Express's Vancouver, Washington terminal. He spent 37% of his working time in Washington. He lived in Washington and held a Washington driver's license. Petition App. A at 2a-3a.

In stark contrast to Mr. Bostain's relatively predictable regional routing, GTI's long-haul drivers roam the continent, picking up and dropping off loads and trailers at locations throughout the United States and Canada. They drive 2,000 or more miles per week in multiple states, for multiple customers, with highly variable and irregular routes. These routes are generally not known prior to—or even at the mid-point of—a given workweek. Shipments may originate at GTI's customers' facilities, terminate at their customers' facilities or a drop lot, and do not necessarily pass through a GTI terminal. A GTI long-haul driver who drove 200 miles in Washington might not drive *another single mile* in

Washington for the rest of three or four applicable pay periods.

Mr. Bostain took his orders from, turned in his time at, and picked up his pay at Food Express's Vancouver, Washington terminal. Petition App. A at 2a-3a. GTI's interstate drivers are, again, quite different. They can and do receive training and work assignments from any of GTI's driver managers, who are located at terminals in five states other than Washington.[4] Drivers may submit their payroll, trip and log book information at any GTI facility or any truck stop within the 48 states. All but a few drivers receive their pay electronically through a ComCard issued by GTI and used nation-wide.

Compounding the difficulty, various potentially relevant factors could change for a particular driver. A GTI driver, for example, might move his residence into or out of Washington at any time, especially along the Washington/Oregon border. A driver who sometimes starts a trip chain out of GTI's Clackamas, Oregon terminal might make two or three consecutive trips out and back from Washington, or one such trip a month, or ten such trips in two months. A driver might initially work mostly with a driver manager outside Washington, but later receive more assignments from a driver manager located in Washington. Many other changes would be possible.

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[4] GTI has two terminals in Oregon, two in California, and one each in Arizona, Utah, Washington and Wisconsin.

GTI's payroll and trips department consists of two supervisors and ten staff people. These twelve non-lawyers could not be expected to keep track of, let alone evaluate the legal significance of, a shifting kaleidoscope of choice of law factors as applied to hundreds of individual drivers in an industry with a 130% annual turnover rate. Thus, even if GTI initially correctly classified a driver as not "Washington-based," the driver might slip into WMWA coverage unnoticed. The driver would then have a claim for damages against both GTI *and the payroll manager* who failed to recognize that the balance of factors had at some point tipped in favor of "Washington-based" status.[5] All interstate trucking companies operating in Washington would face similar problems. In short, the decision below would impose a substantial burden on interstate commerce.

2. The Decision Below Would Not Result in Any Countervailing Local Benefit

Neither of the two local purposes of the WMWA identified by the Washington Supreme Court—"to establish minimum standards of employment within the state of Washington" and "to encourage employment opportunities within the state"[6]—

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[5] *See* RCW 49.52.070 (individual liability for failure to pay wages due pursuant to statute). Failure to pay overtime can also result in criminal penalties. RCW 49.46.100(1).

[6] Petition App. A. at 9a (decision below) (quoting RCW 49.46.0005).

would plausibly be advanced by the court's new overtime rule. For example, far from establishing minimum standards for employment within Washington, the decision below would establish an overtime standard for some employees who, like plaintiff below, work largely *outside* of Washington, while employees doing the same type of work largely *within* Washington (but not "based in" Washington) would work entirely free from the overtime standard.

Moreover, the overtime rule adopted below would *not* encourage employment within Washington. Overtime laws like the WMWA are believed to create additional employment opportunities by making it cheaper to hire additional employees than to pay overtime to existing employees who work more than 40 hours in a workweek (the trigger for overtime pay rates under the WMWA). But this logic does not apply to interstate drivers because interstate drivers do not work in fixed locations in Washington.

A call center or manufacturing facility located in Washington, for example, can send an employee home after the employee works 40-hours in a workweek, and have another local employee report for duty at the first employee's workstation or using the first employee's equipment. In contrast, a Washington-resident interstate driver who reaches his or her 40th hour of work in Wisconsin or New York or Texas cannot simply go home. Rather than earning wages and driving safely within the hours or service limits set by federal

regulations (60 hours per week), the driver would simply be stranded, far from home and family, until a new workweek began.

Nor is there any practical way to send a "Washington-based" employee to replace an idled interstate truck driver, who is likely to be hundreds or thousands of miles from Washington at the 40-hour mark. It would be cost-prohibitive, in both time and fuel, to locate an unoccupied driver and dispatch him or her scores or hundreds of miles to the idled driver. Sending a bobtail tractor[7] to pick up an idled driver's trailer would create an additional problem, to wit, finding a new trailer for the idled driver when his or her next workweek began.

Dispatching replacement drivers *without* equipment is no solution, as GTI's experience retrieving abandoned equipment demonstrates. Drivers occasionally quit abruptly on the road and abandon their trucks. Along the Interstate-5 corridor, GTI can sometimes have one employee shuttle another out to the abandoned equipment (expending fuel and paying both employees for their time). But in many cases, particularly outside the Interstate-5 corridor, GTI has found that the only way to retrieve its equipment is to *fly* another driver out to the location of the abandoned equipment. Either of these practices would be cost-prohibitive and impracticable if done on a regular basis.

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[7] A "bobtail" is a tractor that is not pulling a trailer.

In the interstate trucking context, another disincentive to simply hiring more employees—whether "Washington-based" or not—is the cost of putting a new driver on the road. One cost is the capital cost of equipping the new driver. Unlike in a fixed facility, a replacement driver cannot simply take over another employee's machine or workstation. Rather, putting another driver on the road requires equipping the driver with his or her own tractor-trailer combination, at enormous expense.[8] Another cost particular to the trucking industry is the high cost of legally required hiring processes to which most employees in other industries are not subject. For example, interstate drivers are subject to federally mandated background checks, drug tests, employment verification, and physical examinations over and above GTI's own requirements (such as a driver-qualification test and orientation sessions).

In addition, unlike employers whose employees work in fixed locations, interstate trucking companies have obvious alternatives to hiring additional "Washington-based" employees. GTI, for example, has a terminal in Clackamas, Oregon, which is a short drive from the Washington border. Because long-haul truck drivers are inherently mobile, it would be a relatively simple matter for GTI to rely primarily on drivers who often start trip chains from the Clackamas terminal—and thus are

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[8] A new tractor-trailer combination of the sort employed by GTI costs approximately $144,000.

less likely to be considered "Washington-based" drivers—to haul freight into and out of Washington. Assuming that these drivers were not considered "Washington-based," they would not be entitled to overtime.[9] They could drive for up to 60 hours per week in full compliance with federal safety regulations, increasing their ability to meet the unpredictable, time-sensitive demands of shipping customers. Hiring or assigning work to drivers who are believed to be "based in" (and probably make their homes in) states other than Washington hardly advances the WMWA's goal of increasing employment opportunities within Washington.

Another alternative to relying on "Washington-based" drivers would be for trucking companies to rely more heavily on owner-operators—independent contractors who own their own equipment and are not subject to the WMWA—to haul freight primarily into and out of Washington.[10] Similarly, GTI could refer or subcontract some of its work to out-of-state carriers, whose employment of drivers not "based in" Washington would allow them to perform some work at less cost than GTI could perform it using "Washington-based" drivers. These alternatives, too, would be contrary to the WMWA's goal of

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[9] Oregon does not require overtime for interstate drivers. Or. Admin. Reg. § 839-20-0125(3).

[10] GTI currently contracts with approximately 150 owner-operators.

increasing employment opportunities in Washington.[11]

For GTI to have to refocus its business away from the state of Washington because of the high cost and inflexibility of "Washington-based" drivers would be disappointing to GTI, a family-owned company with deep roots in Washington. The economics and operational realities of the trucking industry, however, would make such changes imperative. Profit margins in the industry run in the three- to five-percent range. Wages and benefits account for approximately 47% of the cost of doing business. Paying overtime up to 60 hours in a workweek increases the cost of labor by more than 16%.[12] A 16% increase in labor costs for "Washington-based" drivers would more than eliminate a trucking company's profits on such drivers' work. In the highly competitive trucking

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[11] Petitioner Food Express would have another option—moving its Vancouver, Washington terminal a few miles across the Oregon border, and dispatching drivers like Mr. Bostain from Oregon. Apart from the impact on drivers, the loss of clerical and mechanical jobs at the Vancouver terminal would further reduce employment opportunities in Washington.

[12] Federal regulations permit interstate drivers to work 60 hours per workweek. Paying time-and-a-half (the WMWA's overtime rate) for hours worked between 40 and 60 in a workweek increases costs by 16% before additional payroll taxes. (At a straight-time rate of $20/hour, 60 hours at straight time is $1,200. Forty hours of straight time plus 20 hours at time-and-a-half ($30/hour) is $1,400, which is 116% of $1,200.)

industry, these costs likely could not be offset with price increases. As a result, the decision below could only cause employment opportunities in Washington to decline, as trucking companies were forced to rely on less costly drivers "based in" states other than Washington.

This Court has recognized that requiring premium pay in an industry characterized by fluctuating hours of employment is a "burden" that Congress, by exempting drivers from the overtime requirements of the federal Fair Labor Standards Act, intended to avoid imposing on interstate carriers. *Southland Gasoline Co. v. Bayley*, 319 U.S. 44, 48 (1943). The Washington Supreme Court's failure to recognize these realities led it to adopt an interpretation of the WMWA that would *discourage* employment within Washington by making "Washington-based" employees more burdensome and expensive to employ than employees who are "based" outside of Washington. The decision would result in no local benefit, let along a local benefit that would outweigh the burdens that it would impose on the interstate trucking industry.

B. The Decision Below Conflicts with This Court's Precedent and the FAAAA Because It Would Have a Significant Effect on Prices, Routes or Service of Interstate Trucking Companies.

The WMWA, as interpreted in the decision below, is preempted by the FAAAA because it would have a "forbidden significant effect" on the

prices, routes or service of interstate motor carriers like GTI. *Morales v. Trans World Airlines, Inc.*, 504 U.S. 374, 388 (1992).[13]

One way to address the increased labor costs resulting from the decision below would be for employers of "Washington-based" drivers to raise prices for shipping to and from Washington. As noted above, however, the increases would have to be significant to cover the increased costs of paying overtime. Thus, if price increases were feasible, the result would be a "forbidden significant effect" under *Morales*.

More likely, however, out-of-state trucking companies that employ legions of "non-Washington-based" drivers would undercut any pricing changes that employers of "Washington-based" drivers sought to make. Thus, companies like GTI would be forced to resort to options such as relying more heavily on drivers who are more or less clearly "based" in other states.[14] In order to do so, however, GTI would have to alter the ways in which it routes its drivers. Moreover, to ensure that drivers did not slip unnoticed into the vague "Washington-based" category, trucking companies

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[13] Notwithstanding the FAAAA's aviation-related title, the Act also applies to motor carriers. *See* 49 U.S.C. § 14501(c). *Morales* involved preemption under the federal Airline Deregulation Act of 1978 ("ADA"); however, as Petitioner describes, Congress intended the FAAAA to have the same broad preemptive effect as the ADA. Petition at 22.

[14] Smaller employers with no out-of-state terminals or drivers would presumably have to shut their doors.

would be incentivized to minimize the time that their drivers spend in Washington. This might involve, for example, routing trucks along Interstate 84 (an east-west route that runs across much of Oregon just south of the border with Washington), rather than Interstate 90 (which runs east-west though Washington State); routing drivers from GTI's Salt Lake City terminal, rather than a Washington terminal, to serve Eastern Washington and points east; or moving GTI's Spokane, Washington satellite yard across the state line to Post Falls or Coeur D'Alene, Idaho. Motor carriers not headquartered in Washington State would undoubtedly take similar steps. The result would be a significant effect on routes, forbidden under *Morales*.

A final alternative would be for GTI to reduce the services it offers in Washington, largely leaving the field to out-of-state competitors who employ drivers who are presumptively "based in" other states. Again, this would be an extraordinary result, in light of GTI's long history of serving customers in Washington. Yet, providing significant service in Washington while maintaining a headquarters and major terminal operations in Washington would either force GTI to rely heavily on "Washington-based" drivers (an economically untenable option) or leave the company constantly exposed to claims that its drivers are in fact "Washington-based" regardless of the locations of their "home" terminals. Thus, if GTI could not address the effects of the decision

below by altering prices or routes, the company would have to alter its services in order to compete in the interstate trucking market.

In short, the WMWA as interpreted below would *necessarily* significantly affect at least one of the areas forbidden under *Morales* (prices, routes or services of motor carriers in Washington). More likely, it would impact all three areas, significantly altering the complexion of interstate trucking in Washington. Washington State businesses that make or receive interstate shipments by truck—that is, virtually every business in Washington—and out-of-state businesses shipping freight into Washington would bear the burden of higher prices and diminished service. As a result, the WMWA as interpreted below is preempted by the FAAAA. The Washington Supreme Court's contrary holding, for which the Court relied on the Ninth Circuit's decision in *Californians for Safe & Competitive Dump Truck Transp. v. Mendonca*, 152 F.3d 1184, 1187-89 (9th Cir. 1998), places the decision below squarely on the wrong side of a circuit split regarding this Court's applicable preemption precedents. *See* Petition at 23-24; ATA/WTA Brief at 20.

IV. CONCLUSION

The Petition for a Writ of Certiorari should be granted.

Respectfully submitted,

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